

***United States Court of Appeals
for the Second Circuit***



**PETITION FOR
REHEARING
EN BANC**

75-7203

United States Court of Appeals
FOR THE SECOND CIRCUIT

ROBERT ABRAHAMSON and MARJORIE ABRAHAMSON,
Plaintiffs-Appellants,

—v.—

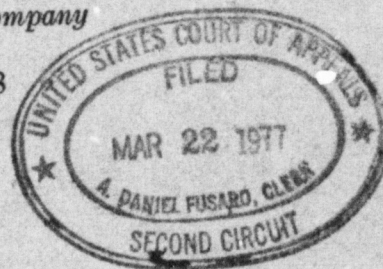
MALCOLM K. FLESCHER, WILLIAM J. BECKER, HAROLD
B. EHRLICH, LEON POMERANCE, FLESCHER BECKER
ASSOCIATES, and HARRY GOODKIN & COMPANY,
Defendants-Appellees.

ON APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHEASTERN DISTRICT OF NEW YORK

**PETITION FOR REHEARING AND
SUGGESTION FOR REHEARING IN BANC**

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
NO. 212 - SEPTEMBER TERM, 1975
DOCKET NO. 75-7203

-----x
ROBERT ABRAHAMSON and
MAJORIE ABRAHAMSON,

Plaintiffs-Appellants,

v.

MALCOLM K. FLECHNER, WILLIAM J.
BECKER, HAROLD B. EHRLICH, LEON
POMERANCE, FLECHNER BECKER
ASSOCIATES and HARRY GOODKIN &
COMPANY,

Defendants-Appellees.
-----x

PETITION FOR REHEARING AND
SUGGESTION FOR REHEARING IN BANC

Defendant-appellee Harry Goodkin & Company ("Goodkin")
petitions for rehearing, pursuant to Fed. R. App. P. Rule 40,
and suggests rehearing in banc, pursuant to Fed. R. App. P. Rule
35, with respect to these portions of the decision and judgment
of this Court which hold that the complaint states a claim upon
which relief may be granted and a private right of action for
damages may be implied under Section 206 of the Investment Advisers
Act of 1940, as amended, against accountants and other persons who
are not investment advisers.*

* Goodkin also joins in the reasons put forth by defendants- appellees
Fleschner, Becker, Ehrlich, Pomerance and Fleschner Becker Associates
as such reasons may be applicable to Goodkin.

The majority of this Court held in the affirmative notwithstanding that (a) Section 206 applies on its face only to investment advisers and not to "any person" and (b) Congress explicitly intended to deny private plaintiffs the right to bring actions for damages under the Act against alleged aiders and abettors when it conferred enforcement powers upon the Securities and Exchange Commission with respect to aiders and abettors in 1960.

In Cort v. Ash, 422 U.S. 66, 78 (1978), the Supreme Court stated that a relevant factor in determining "whether a private remedy is implicit in a statute not expressly providing one" is whether there is "any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one? . . ." (emphasis added). As demonstrated in the Supplemental Brief for Appellee at Points II, Congress, when legislating with respect to aiding and abetting in 1960, intended to " . . . [M]ake it clear that no civil liability to private individuals is intended . . ." Hearings before a Subcommittee of the Committee on Banking and Currency, United States Senate, on S. 1178, S. 1179, 86th Cong., 1st Session 496. In holding against the defendant-appellee, it appears that the Court overlooked this explicit indication of congressional intention. For this reason a rehearing should be granted.

Respectfully submitted,
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AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

PATRICIA M. BRESLIN, being duly sworn, deposes and says: deponent is not a party to the action, is over 18 years of age and resides at 30-49 47th Street, Astoria, New York 11103 on March 21, 1977 deponent served two copies of the within Petition For Rehearing upon:

Shea, Gould, Climenko, Kramer & Casey
Attorneys for Plaintiffs-Appellants
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New York, New York 10017

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Washington, D.C. 20549

the addresses designed by said attorneys for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service.

Patricia M. Breslin
PATRICIA M. BRESLIN

Sworn to before me this 22nd
day of March, 1977

Carolyn J. DiLorenzo
NOTARY PUBLIC

CAROLYN J. DILORENZO
Notary Public, State of New York
No. 244321517
Qualified in Kings County
Commission Expires March 30, 1977